

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 270

---

AN ACT to amend the Indiana Code concerning motor fuel and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-2.5-7-5, AS AMENDED BY P.L.122-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.
- (5) The total amount of money received from the sale of special fuel during the period covered by the report.
- (6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article,



C  
o  
p  
y

IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, ~~2008~~, **2020**, determine the product of:

(A) ~~ten eighteen~~ cents (~~\$0.10~~); **(\$0.18)**; multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed ~~two one~~ million dollars (~~\$2,000,000~~) **(\$1,000,000)** for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:

(1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus

(2) the total amount of deductions granted under subsection (c)

C  
o  
p  
y



STEP TWO in all preceding reporting periods; will exceed ~~two one~~ million dollars (~~\$2,000,000~~), (**\$1,000,000**), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.

SECTION 2. IC 8-14-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. (a) The auditor of state shall establish a special account to be called the "local road and street account" and credit this account monthly with forty-five percent (45%) of the money deposited in the highway, road and street fund.

(b) The auditor shall distribute to units of local government money from this account each month. **Before making any other distributions under this chapter, the auditor shall distribute E85 incentive payments to all political subdivisions entitled to a payment under section 8 of this chapter.**

(c) **After distributing E85 incentive payments required under section 8 of this chapter,** the auditor of state shall allocate to each county the **remaining** money in this account on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the state. The auditor shall further determine the suballocation between the county and the cities within the county as follows:

- (1) In counties having a population of more than fifty thousand (50,000), sixty percent (60%) of the money shall be distributed on the basis of the population of the city or town as a percentage of the total population of the county and forty percent (40%) distributed on the basis of the ratio of city and town street mileage to county road mileage.
- (2) In counties having a population of fifty thousand (50,000) or less, twenty percent (20%) of the money shall be distributed on the basis of the population of the city or town as a percentage of the total population of the county and eighty percent (80%) distributed on the basis of the ratio of city and town street mileage to county road mileage.
- (3) For the purposes of allocating funds as provided in this section, towns which become incorporated as a town between the effective dates of decennial censuses shall be eligible for allocations upon the effectiveness of a corrected population count for the town under IC 1-1-3.5.
- (4) Money allocated under the provisions of this section to

C  
o  
p  
y



counties containing a consolidated city shall be credited or allocated to the department of transportation of the consolidated city.

(d) Each month the auditor of state shall inform the department of the amounts allocated to each unit of local government from the local road and street account.

SECTION 3. IC 8-14-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 8. (a) As used in this section, "administrator" has the meaning set forth in IC 6-6-1.1-103(a).**

**(b) As used in this section, "E85" has the meaning set forth in IC 6-6-1.1-103(s).**

**(c) As used in this section, "qualified motor vehicle" means a motor vehicle that may be fueled by E85.**

**(d) A political subdivision is entitled to a monthly E85 incentive payment under this section if at least seventy-five percent (75%) of the motor fuel purchased by the political subdivision in the preceding calendar month for use in the political subdivision's qualified motor vehicles was E85.**

**(e) Subject to subsection (i), the amount of a monthly E85 incentive payment to which a political subdivision is entitled under this section is equal to:**

- (1) the total number of qualified motor vehicles owned by the political subdivision; multiplied by**
- (2) thirty-three dollars and thirty-three cents (\$33.33).**

**(f) To claim an E85 incentive payment under this section, the fiscal officer of a political subdivision must present to the auditor of state a statement that:**

- (1) contains a written verification that the incentive payment claim is made under penalties of perjury; and**
- (2) sets forth:**

- (A) the total number of qualified motor vehicles owned by the political subdivision;**
- (B) the total amount of E85 purchased by the political subdivision in the preceding calendar month for use in each qualified motor vehicle described in clause (A); and**
- (C) the total amount of motor fuel purchased for use in each qualified motor vehicle described in clause (A).**

**(g) The auditor of state may request the administrator to make investigations the auditor of state considers necessary before issuing an E85 incentive payment under this section. The administrator shall provide any assistance requested under this**

**C  
o  
p  
y**



section. Upon the request of the administrator, a political subdivision shall furnish to the administrator sufficient documentation to prove the validity of the information presented under subsection (f).

(h) If an E85 incentive payment is not issued within ninety (90) days after filing of the verified statement and all supplemental information required by subsection (g), the auditor of state shall pay interest at the rate established by IC 6-8.1-9 computed from the date of filing of the verified statement and all supplemental information required under this section until a date determined by the auditor of state that does not precede by more than thirty (30) days the date on which the E85 incentive payment is made.

(i) A political subdivision is not entitled to an E85 incentive payment for E85 used in a qualified motor vehicle owned by the political subdivision after December 31 of the fifth calendar year of the political subdivision's ownership of the qualified motor vehicle.

(j) This section expires January 1, 2015.

SECTION 4. IC 15-9-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

**Chapter 5. E85 Fueling Station Grant Program**

**Sec. 1.** As used in this chapter, "E85 base fuel" has the meaning set forth for "E85" in IC 6-6-1.1-103.

**Sec. 2.** As used in this chapter, "fueling station" refers to tangible property (other than a building and its structural components) consisting of:

- (1) a tank;
- (2) a pump; and
- (3) other components;

that is used by a person engaged in the business of selling motor fuel at retail to enable motor fuel to be dispensed directly into the fuel tank of a customer's motor vehicle.

**Sec. 3.** As used in this chapter, "location" refers to one (1) or more parcels of land that:

- (1) have a common access to a public highway; and
- (2) are or would appear to the reasonable person making an observation from a public highway to be part of the same business.

**Sec. 4.** As used in this chapter, "motor vehicle" means any vehicle that:

- (1) is manufactured primarily for use on public streets, roads,

**C  
o  
p  
y**



and highways (not including a vehicle operated exclusively on a rail or rails); and

(2) has at least four (4) wheels.

**Sec. 5.** As used in this chapter, "qualified investment" refers to an ordinary and usual expense that is incurred after June 30, 2007, to do either of the following:

(1) Purchase any part of a renewable fuel compatible fueling station for the purpose of:

(A) installing the new renewable fuel compatible fuel station at a location on which a fueling station is not located; or

(B) converting an existing fueling station that is not a renewable fuel compatible fueling station into a fueling station that is a renewable fuel compatible fueling station.

(2) Refit any part of a fueling station that is not renewable fuel compatible as a renewable fuel compatible fueling station, including the costs of cleaning storage tanks and piping to remove petroleum sludge and other contaminants.

**Sec. 6.** As used in this chapter, "renewable fuel compatible" means:

(1) capable of storing and delivering E85 base fuel without contaminants resulting from deterioration from constant contact with alcohol fuels; and

(2) in conformity with applicable governmental standards, if any, and other nationally recognized standards applying to storage and handling of E85 base fuel, as determined under the standards prescribed by the department.

**Sec. 7.** (a) The department may award a grant under this chapter to a person that:

(1) makes a qualified investment; and

(2) places the qualified investment in service;

in Indiana for the dispensing of E85 base fuel into the fuel tanks of motor vehicles.

(b) A recipient of a grant awarded under this chapter must comply with any guidelines developed by the state department of agriculture's office of energy and defense development.

**Sec. 8.** (a) Subject to subsection (b), the state department of agriculture's office of energy and defense development shall determine the amount of each grant awarded under this chapter.

(b) The amount of a grant awarded under this chapter may not exceed the lesser of the following:

(1) The amount of the person's qualified investment.

**C  
O  
P  
Y**



(2) Five thousand dollars (\$5,000) for all qualified investments made by the person at a single location.

**Sec. 9.** The department shall do the following:

- (1) Prepare and supervise the issuance of public information concerning the grant program established under this chapter.
- (2) Prescribe the form for and regulate the submission of applications for grants under this chapter.
- (3) Determine an applicant's eligibility for a grant under this chapter.

**Sec. 10.** The total amount of grants awarded under this chapter for all state fiscal years may not exceed one million dollars (\$1,000,000).

**Sec. 11. (a)** The E85 fueling station grant fund is established to provide grants under this chapter.

(b) The fund consists of appropriations from the general assembly.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for purposes of this chapter.

(e) Money in the fund is continuously appropriated for the purposes of this chapter.

**Sec. 12.** A grant awarded under this chapter is not subject to taxation under IC 6-3-1 through IC 6-3-7.

**Sec. 13.** A grant awarded under this chapter does not reduce the basis of the qualified property for purposes of determining any gain or loss on the property when the grant recipient disposes of the property.

**SECTION 5.** [EFFECTIVE JULY 1, 2007] IC 6-2.5-7-5, as amended by this act, applies to reporting periods ending after June 30, 2007.

**SECTION 6.** [EFFECTIVE JULY 1, 2007] (a) There is appropriated to the department of agriculture one million dollars (\$1,000,000) from the state general fund for deposit in the E85 fueling station grant fund established under IC 15-9-5, as added by this act, beginning July 1, 2007, and ending June 30, 2008.

(b) This SECTION expires July 1, 2008.

**SECTION 7.** [EFFECTIVE JANUARY 1, 2008] (a) IC 8-14-2-8, as added by this act, applies to a political subdivision's purchase of E85 (as defined in IC 6-6-1.1-103(s)) occurring after December 31,

C  
o  
p  
y



**2007.**

**(b) A political subdivision may not claim an E85 incentive payment for any purchase of E85 occurring after December 31, 2014.**

**C  
o  
p  
y**





---

President of the Senate

---

President Pro Tempore

---

Speaker of the House of Representatives

---

Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**C  
o  
p  
y**

